

1989

Alphagraphics Commercial Printing Divison v. Charles C. Brown, an individual, and Brown, Smith and Hanna, a Utah professional corporation : Brief of Appellant

Utah Court of Appeals

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Joseph C. Rust; Scott O. Mercer; Kesler & Rust; Attorneys for Respondent.

Charles C. Brown; Jeffrey B. Brown; Brown, Smith & Hanna; Attorneys for Appellant.

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BRIEF

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DOCKET NO. 890686-CA

IN THE UTAH COURT OF APPEALS

ALPHAGRAPHS COMMERCIAL)	
PRINTING DIVISION, a Utah)	
corporation,)	DOCKET NO. 890686-CA
Plaintiff and Respondent,)	
vs.)	
CHARLES C. BROWN, an individual,)	ARGUMENT PRIORITY 14B
and BROWN, SMITH & HANNA, a Utah)	
professional corporation,)	
Defendants and Appellants.)	

ADDENDUM TO APPELLANT'S BRIEF

An appeal from a Final Judgment of Judge Floyd H. Gowans,
Judge of the Third Circuit Court, State of Utah
Salt Lake County, Salt Lake City Department

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TABLE OF CONTENTS

Section 25-5-4 U.C.A. (1953 as amended)	Exhibit "A"
Plaintiff's Response to Defendant's First Set of Request for Admissions, Request for Production of Documents and Interrogatories	Exhibit "B"
Findings of Fact and Conclusions of Law	Exhibit "C"
Objection to Findings of Fact and Conclusions of Law	Exhibit "D"
Transcript of Trial, July 18, 1989 and August 9, 1989	Exhibit "E"

EXHIBIT "A"

TITLE 25

FRAUD

Chapter

5. Statute of Frauds.

6. Uniform Fraudulent Transfer Act.

CHAPTER 5

STATUTE OF FRAUDS

Section

**25-5-4. Certain agreements void unless
written and signed.**

25-5-4. Certain agreements void unless written and signed.

The following agreements are void unless the agreement, or some note or memorandum of the agreement, is in writing, signed by the party to be charged with the agreement:

- (1) every agreement that by its terms is not to be performed within one year from the making of the agreement;
- (2) every promise to answer for the debt, default, or miscarriage of another;
- (3) every agreement, promise, or undertaking made upon consideration of marriage, except mutual promises to marry;
- (4) every special promise made by an executor or administrator to answer in damages for the liabilities, or to pay the debts, of the testator or intestate out of his own estate;
- (5) every agreement authorizing or employing an agent or broker to purchase or sell real estate for compensation;
- (6) every credit agreement.

(a) As used in Subsection (6):

(i) "Credit agreement" means an agreement by a financial institution to lend, delay, or otherwise modify an obligation to repay money, goods, or things in action, to otherwise extend credit, or to make any other financial accommodation. "Credit agreement" does not include the usual and customary agreements related to deposit accounts or overdrafts or other terms associated with deposit accounts or overdrafts.

(ii) "Creditor" means a financial institution which extends credit or extends a financial accommodation under a credit agreement with a debtor.

(iii) "Debtor" means a person who seeks or obtains credit, or seeks or receives a financial accommodation, under a credit agreement with a financial institution.

(iv) "Financial institution" means a state or federally chartered bank, savings and loan association, savings bank, industrial loan corporation, credit union, or any other institution under the jurisdiction of the commissioner of Financial Institutions as provided in Title 7, Financial Institutions Act of 1981.

(b) A debtor or a creditor may not maintain an action on a credit agreement unless the agreement is in writing, expresses consideration, sets forth the relevant terms and conditions, and is signed by the party against whom enforcement of the agreement would be sought. For purposes of this act, a signed application constitutes a signed agreement, if the creditor does not customarily obtain an additional signed agreement from the debtor when granting the application.

(c) The following actions do not give rise to a claim that a credit agreement is created, unless the agreement satisfies the requirements of Subsection (b):

- (i) the rendering of financial advice by a creditor to a debtor;
- (ii) the consultation by a creditor with a debtor; or
- (iii) the creation for any purpose between a creditor and a debtor of fiduciary or other business relationships.

(d) Each credit agreement shall contain a clearly stated typewritten or printed provision giving notice to the debtor that the written agreement is a final expression of the agreement between the creditor and debtor and the written agreement may not be contradicted by evidence of any alleged oral agreement. The provision does not have to be on the promissory note or other evidence of indebtedness that is tied to the credit agreement.

History: R.S. 1898 & C.L. 1907, § 2467; L. 1909, ch. 72, § 1; C.L. 1917, § 5817; R.S. 1933 & C. 1943, 33-5-4; L. 1989, ch. 257, § 1.

Amendment Notes. — The 1989 amendment, effective April 24, 1989, rewrote the beginning of the section which read "In the following cases every agreement shall be void un-

less such agreement, or some note or memorandum thereof, is in writing subscribed by the party to be charged therewith"; substituted "of the agreement" for "thereof" at the end of Subsection (1); added Subsection (6); and made minor stylistic changes.

CHAPTER 6

UNIFORM FRAUDULENT TRANSFER ACT

Section

25-6-6. Fraudulent transfer — Claim arising before transfer.

EXHIBIT "B"

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IN THE THIRD CIRCUIT COURT OF SALT LAKE COUNTY

SALT LAKE CITY DEPARTMENT, STATE OF UTAH

ALPHAGRAPHICS COMMERCIAL	:	
PRINTING DIVISION, a Utah	:	PLAINTIFF'S RESPONSE TO
corporation,	:	DEFENDANT'S FIRST SET OF
Plaintiff,	:	REQUEST FOR ADMISSIONS,
	:	REQUEST FOR PRODUCTION
v.	:	OF DOCUMENTS AND
	:	INTERROGATORIES
CHARLES C. BROWN, an individual,	:	
and BROWN, SMITH & HANNA, a Utah	:	
professional corporation,	:	Civil No. 883012610CV
	:	
Defendants.	:	Judge Floyd H. Gowans

Plaintiff AlphaGraphics Commercial Printing Division hereby
objects and responds to defendants' first set of request for
admissions, request for production of documents and
interrogatories as follows:

OBJECTION TO DEFINITIONS AND INSTRUCTIONS

Plaintiff objects to defendants' definitions and
instructions on the grounds and to the extent that they violate

or exceed Rule 26 et. seq. of the Utah Rules of Civil Procedure. In responding to defendants' discovery, plaintiff shall follow Rule 26 et. seq. of the Utah Rules of Civil Procedure and objects to any unilateral imposition of any additional rules, definitions or instructions by defendant.

RESPONSE TO REQUEST FOR ADMISSION

1. Admit that Exhibit "A" attached to plaintiff's Complaint has an altered date to that of July 20, 1988.

Response to Request for Admission No. 1: Deny. The typed date of July 11, 1988 is the date the partial job was picked up. The written date of July 20, 1988 is the date the remainder of the job was completed.

2. Admit that Exhibit "A" was not signed by either of the defendants.

Response to Request for Admission No. 2: Admit.

3. Admit that neither Jim nor Marsha spoke with Charles C. Brown regarding the invoice or the account.

Response to Request for Admission No. 3: Deny.

4. Admit that given the date change to July 20, 1988, that no invoice marked as Exhibit "A" was sent to anyone on or about July 11, 1988.

Response to Request for Admission No. 4: Plaintiff

objects to request for admission no. 4 on the grounds that it is not "given" that there was a "date change". The invoice marked as Exhibit "A" was mailed on or about the date marked on the invoice.

5. Admit that the invoice has as attention Guy Davis and Charles Brown.

Response to Request for Admission No. 5: Plaintiff

objects to defendants' characterization of Exhibit "A". Exhibit "A" speaks for itself.

6. Admit that plaintiff had no discussion with Charles Brown of Brown, Smith & Hanna.

Response to Request for Admission No. 6: Deny.

7. Admit that James B. Luebcke was affiliated in 1988 with Progressive Printing.

Response to Request for Admission No. 7: Admit.

8. Admit that Charles C. Brown did not authorize plaintiff to proceed with printing services.

Response to Request for Admission No. 8: Deny.

9. Admit that there is no writing signed by Charles C. Brown making it liable to plaintiff.

Response to Request for Admission No. 9: Plaintiff

objects to request for admission no. 9 on the grounds that it is

unintelligible. Plaintiff admits that Charles C. Brown has not signed the invoice in question, but affirms that Charles C. Brown is liable to plaintiff.

10. Admit that plaintiff did not intend to hold Brown, Smith & Hanna liable for the invoice given it's allegation in paragraph 5 that "defendant, Brown, Smith & Hanna informed plaintiff that Brown of Brown, Smith & Hanna would be responsible for payment of the bill".

Response to Request for Admission No. 10: Deny.

11. Admit that plaintiff was never told that Brown, Smith & Hanna would be responsible for payment of the bill.

Response to Request for Admission No. 11: Deny.

INTERROGATORIES

1. Set forth with particularity the involvement of James Luebcke with Progressive Printing and include in your answer his position as officer and director and shareholder giving dates.

Response to Interrogatory No. 1: From 1983 to 1988, James Luebcke was vice-president and 40% shareholder of Progressive Printing.

2. Set forth the dates upon which Progressive Printing filed bankruptcy and the date that it was converted from a

Chapter 11 to a Chapter 7.

Response to Interrogatory No. 2: Plaintiff objects to interrogatory no. 2 on the grounds that Progressive Printing is not a party to this lawsuit and plaintiff has no control over the information requested. However, in the interest of facilitating discovery, and without waiving this objection, plaintiff believes that Progressive Printing filed bankruptcy August 25, 1985; conversion to Chapter 7 was June 20, 1988; trustee took over on July 27, 1988.

3. Set forth the involvement of James Luebcke with AlphaGraphics include in your answer his status as officer, employee director and shareholder and any percentage.

Response to Interrogatory No. 3: Plaintiff objects to interrogatory no. 3 on the grounds that it is ambiguous and unintelligible. In the interest of facilitating discovery, and without waiving this objection, plaintiff notes that Mr. Luebcke became vice president of AlphaGraphics on September 1, 1988.

4. Set forth specifically and in detail all conversations that James Luebcke had with anybody at Brown, Smith & Hanna and Charles C. Brown while at Progressive Printing.

Response to Interrogatory No. 4: Plaintiff objects to interrogatory no. 4 on the grounds that it is impossible for Mr. Luebcke to recall specifically and in detail all conversations he

had with anyone at Brown, Smith & Hanna or Charles Brown while at Progressive Printing. Plaintiff also objects on the grounds that this interrogatory is without scope, is irrelevant and immaterial, and is not reasonably calculated to lead to the discovery of admissible evidence. However, in the interest of facilitating discovery, and without waiving this objection, and as clearly as Mr. Luebcke can recall, Mr. Luebcke was contacted at Progressive Printing by René of Brown, Smith & Hanna prior to July 8, 1988 and asked for a quote on 20 copies of a 120 page prospectus. Mr. Luebcke gave a quote of \$500.00 plus. On July 8, 1988, René of Brown, Smith & Hanna again called Mr. Luebcke and asked him to come to Brown, Smith & Hanna and pick up the order.

Upon arriving at Brown, Smith & Hanna, Mr. Luebcke introduced himself to the receptionist and asked for René. When René showed Mr. Luebcke the job, he stated that this was not the job that had been explained to him. That is, Mr. Luebcke informed René that art boards, overlays, colored inks and glossy stock could not be produced on copying equipment. Mr. Luebcke was also informed at that time that 20 copies was incorrect and that the job was in fact for 250 copies.

Because this job did not fit the equipment of Progressive Printing, Progressive Printing contacted AlphaGraphics. For many

years, Progressive Printing and AlphaGraphics had vended work back and forth in order to satisfy individual customer needs. Mr. Luebcke therefore contacted Mr. Kermit Johnson of AlphaGraphics to discuss the job. On Saturday, July 9, 1988, Mr. Johnson contacted defendant Charles C. Brown at his residence via telephone. Mr. Johnson introduced himself as president of AlphaGraphics and informed Mr. Brown that Mr. Luebcke and AlphaGraphics were working together on the job. Mr. Brown answered several questions from Mr. Johnson concerning the job and Mr. Johnson and Mr. Luebcke proceeded with the production.

On Monday morning, July 11, 1988, Mr. Luebcke called the office of Brown, Smith & Hanna and was informed that Charles Brown had left town but that his brother, Jeffrey B. Brown needed to meet with Mr. Luebcke and go over some changes in the prospectus. At that point, Mr. Luebcke, Mr. Johnson and Mr. Lawry East of AlphaGraphics went to the offices of Brown, Smith & Hanna and met Jeffrey Brown in the Brown, Smith & Hanna conference room. Mr. Jeff Brown provided Mr. Luebcke, Mr. Johnson and Mr. East with a number of originals to replace existing copies and Mr. East discussed laser setting the prospectus from Mr. Brown's word processor disk. At the conclusion of the meeting, Mr. Luebcke addressed Mr. Jeff Brown, informing him that the job had gone to a \$4,000.00 project, and

Mr. Luebcke needed to know who was responsible for payment before proceeding. Mr. Jeff Brown responded that Mr. Charles C. Brown was responsible for payment.

At that point, plaintiff completed the 20 copies needed for a noon meeting the following day (Tuesday, July 12, 1988) and finished up the balance of the 250 copies the week to ten days following. The job was then billed to Charles C. Brown and Brown, Smith & Hanna toward the end of July, 1988.

After the job was completed, Mr. Luebcke called the offices of Brown, Smith & Hanna, spoke with a woman named Debbie (after asking for Charles Brown) and she said Mr. Charles Brown was not available but would have him call. This process was repeated at least six times. On one such call, Mr. Luebcke asked who else was in charge of payables. Debbie then acted frustrated and said that she was, but she could not get Mr. Charles Brown to pay this bill. On a subsequent call, Mr. Luebcke did speak with Charles Brown. Mr. Brown informed Mr. Luebcke that Mr. Brown had not received a large enough retainer from his client to satisfy this bill. Mr. Brown said he would call his client and get more money from his client in order to pay the bill.

Approximately one week later, Mr. Luebcke called Mr. Charles Hanna of the firm of Brown, Smith & Hanna and asked if Mr. Hanna would intervene on behalf of Mr. Luebcke. Mr. Hanna said he was

aware of the situation, was sympathetic and would attempt to get Mr. Charles Brown to pay the bill. A few days later, Mr. Luebcke went personally to the office of Brown, Smith & Hanna to collect the bill. He met Debbie who appeared quite frustrated by the visit and informed Mr. Luebcke that she was unable to get Mr. Brown to pay the bill.

5. Set forth specifically and in detail the content of all conversations that representatives of AlphaGraphics had with anybody at Brown Smith & Hanna and with Charles C. Brown.

Response to Interrogatory No. 5: Plaintiff objects to interrogatory no. 5 on the grounds that it is impossible for plaintiff to recall specifically and in detail the content of all conversations that representatives of AlphaGraphics had with anybody at Brown, Smith & Hanna and with Charles C. Brown. See objections to interrogatory no. 4. However, in the interest of facilitating discovery, and without waiving this objection, see answer to interrogatory no.4.

6. Set forth specifically and in detail all the contents of conversations that plaintiff had with Guy Davis and representatives of William Cooper Winery, Inc.

Response to Interrogatory No. 6: Plaintiff objects to interrogatory no. 6 on the grounds that it is virtually impossible for plaintiff to recall specifically and in detail all

the contents of conversations that plaintiff had with Guy Davis and representatives of William Cooper Winery, Inc. This interrogatory is unlimited in scope and reaches well beyond the time period having to do with the subject matter of this lawsuit. Plaintiff has had numerous conversations with Guy Davis regarding other matters. In the interest of facilitating discovery, and without waiving this objection, plaintiff notes that it spoke with Mr. Guy Davis regarding the prospectus in question in the offices of Brown, Smith & Hanna in the initial meeting of July 8, 1988 with René of Brown, Smith & Hanna. Mr. Davis and René explained the job in greater detail in that meeting as set forth in plaintiff's answer to interrogatory no. 4.

7. List all services performed by plaintiff where the client initially contacted Progressive Printing.

Response to Interrogatory No. 7: Plaintiff objects to interrogatory no. 7 on the grounds that it is ambiguous and unintelligible. In the interest of facilitating discovery, and without waiving this objection, and in an attempt to understand interrogatory no. 7, plaintiff notes that defendants initially contacted Progressive Printing. This job was more than Progressive Printing's equipment could handle and Progressive Printing contacted AlphaGraphics. In the conversation between Mr. Charles Brown and Mr. Kermit Johnson of AlphaGraphics on July

9, 1988, Mr. Brown acknowledged that AlphaGraphics would be performing this work.

8. List and identify any transfer of business from Progressive Printing to AlphaGraphics during the time that Progressive Printing was in bankruptcy.

Response to Interrogatory No. 8: Plaintiff objects to interrogatory no. 8 on the grounds that Progressive Printing is not a party to this lawsuit and plaintiff has no control over this information. AlphaGraphics is aware of a substantial amount of work vended from Progressive Printing to AlphaGraphics from 1985 to 1988. Plaintiff objects to this interrogatory to the extent that it requires an identification of all such business, since it has nothing to do with the subject matter of this lawsuit. Defendants have acknowledged that this work was transferred to plaintiff.

9. Identify all documents relating to Account No. B00900 including internal books and records of plaintiff.

Response to Interrogatory No. 9: See accompanying documents.

10. Identify any and all documents with reference to the order taken by Jim and Marsha relating to Account No. B00900.

Response to Interrogatory No. 10: See accompanying documents.

11. Identify the parties that entered into a discussion on or about July 1, 1988 regarding your allegation that a price quotation was given for certain printing service and that plaintiff informed Brown, Smith & Hanna that the requested services would be approximately \$4,000.00.

Response to Interrogatory No. 11: See objection and response to interrogatory no. 4.

12. Please set forth the contents of the discussions referenced to in 11.

Response to Interrogatory No. 12: See objection and response to interrogatory no. 4.

13. Set forth specifically and in detail the terms of the authorization given by Brown, Smith & Hanna for plaintiff to proceed with printing services on the basis of the approximate quotation given on or about July 11, 1988.

Response to Interrogatory No. 13: See objection and response to interrogatory no. 4.

14. Set forth the content of the conversation regarding the allegation that Brown, Smith & Hanna informed plaintiff that Brown of Brown, Smith & Hanna would be responsible for payment of the bill.

Response to Interrogatory No. 14: See objection and response to interrogatory no. 4.

15. With reference to the allegation that printing services were rendered to defendants, set forth in detail what services were rendered and to whom delivery of the prospectus was made.

Response to Interrogatory No. 15: See objection and response to interrogatory no. 4. The printing services requested by defendants were delivered to both defendants at the request of both defendants.

16. Set forth an itemization of how plaintiff arrived at a cost of \$4,000.00 for 250 prospectuses.

Response to Interrogatory No. 16: See accompanying documents.

17. Identify any and all documents which support, tend to support, or which are relevant to the allegations of the Complaint and Answer filed herein.

Response to Interrogatory No. 17: Plaintiff objects to this interrogatory on the grounds that it calls for plaintiff's attorney work product. Without waiving this objection, see accompanying documents.

18. Set forth specifically and in detail all conversations between representatives of plaintiff with Guy Davis of William Cooper Winery, Inc.

Response to Interrogatory No. 18: Plaintiff objects to interrogatory no. 18 on the grounds that it is identical to

interrogatory no 6.

19. Please identify each and every document you intend to introduce as an exhibit at trial.

Response to Interrogatory No. 19: See accompanying documents.

20. Please set forth the names, addresses and a summary of each person's knowledge which you know or believe to know have knowledge of the claims, defenses and discovery in this case.

Response to Interrogatory No. 20: Kermit Johnson, James Luebcke, Keni Johnson, Lawry East, Guy Davis, Jeff Brown; Charles Brown, and René and Debbie of Brown, Smith & Hanna. Plaintiff believes that each of these individuals has knowledge regarding the information set forth in this response to discovery.

21. Identify all documents with reference to the bankruptcy proceedings of Progressive Printing.

Response to Interrogatory No. 21: Plaintiff objects to interrogatory no. 21 on the grounds that Progressive Printing is not a party to this lawsuit and plaintiff has no control over the information requested.

22. Identify the books and records of AlphaGraphics, including the corporate records, employment contracts, balance sheets, income statements, tax returns and accounts payable and receivable lists.

Response to Interrogatory No. 22: Plaintiff has been in business since 1969. Plaintiff objects to interrogatory no. 22 on the grounds that it is unlimited in scope, is oppressive, irrelevant, immaterial and not calculated to lead to the discovery of admissible evidence. Defendant merely seeks to harass plaintiff in this interrogatory.

23. Identify the books and records of Progressive Printing, including the ledgers, balance sheets, income statements, tax returns, accounts payable list, and account receivable lists.

Response to Interrogatory No. 23: Plaintiff objects to interrogatory no. 23 on the grounds that Progressive Printing is not a party to this lawsuit and plaintiff has no control the information requested.

REQUEST FOR PRODUCTION OF DOCUMENTS

1. All documents identified or relied upon by you in making your complaint and in your answer to this discovery.

Response to Request No. 1: See accompanying documents.

2. All documents or other items you intend to introduce as exhibits at trial.

Response to Request No. 2: See accompanying documents.

Plaintiff has not enclosed a copy of the rough draft materials or final prospectus, since defendants obviously have copies. However, plaintiff will provide copies if defendants request them.

DATED this 13 day of February, 1989.

KESLER & RUST

By Scott O. Mercer
Scott O. Mercer
Attorneys for Plaintiffs

VERIFICATION

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

James B. Luebcke, being first duly sworn upon oath, deposes and says that he has read the foregoing Plaintiff's Response to Defendant's First Set of Request for Admissions, Request for

Production of Documents and Interrogatories and that the information contained herein is true to the best of his knowledge and belief.

SUBSCRIBED AND SWORN TO before me this 13th day of February, 1989.

(Seal)

James B. Felt
NOTARY PUBLIC
Residing at Salt Lake City

My Commission Expires:

March 10, 1992

CERTIFICATE OF MAILING

I hereby declare that I caused to be mailed a true and correct copy of the foregoing PLAINTIFF'S RESPONSE TO DEFENDANT'S FIRST SET OF REQUEST FOR ADMISSIONS, REQUEST FOR PRODUCTION OF DOCUMENTS AND INTERROGATORIES in Civil No. 883012610CV, postage prepaid, this 14th day of February, 1989, to:

Budge W. Call
BROWN, SMITH & HANNA, P.C.
City Centre I, Suite 401
175 East 400 South
Salt Lake City, Utah 84111
Attorneys for Defendants

James B. Felt

l:obresp.bsh

3

IDER
KEN BY

DEB

7/14
DATEalphaGraphics®
Printshops Of The Future

INVOICE

10527

B INSPECTED BY

122 South Main • 364-8451

ACCOUNT #

ME AlphaGraphics COM. D.O. PHONE

DRESS

TENTION

Jim

CUSTOMER P.O.#

AVOID VERBAL INSTRUCTIONS

PROOF DUE

ORDER DUE

TIME AM PM M T W Th F S

RUSH ☐ CALL WHEN READY ☐ HOLD ☐

PT	ORIGINALS	COPIES PER	SIDES	COLLATE	STAPLE MISC.	UNIT \$ FROM MATRIX	EXTRAS							TOTAL COPIES	TOTAL \$ OF UNIT \$	AMOUNT	
							RUSH 01	8 1/2 x 14 .01	TIMELESS COLOR 01	CUST. STOCK 01	COTTON 02	ASTRO TEXT 03	D/S .005				
	136	25	D/S	x									.005	3400	.645	163	70
	16	25	D/S	x	x								.005	650	.051	33	15
	79	225	D/S											17,775	.035	1,22	12
	18	225	D/S											4,50	.035	141	75

ORIGINALS	QTY. PER	SIDES	DESCRIPTION	FINISHED PIECES	PAPER SIZE	COLOR / WEIGHT / TYPE	INK COLOR / % ODD SIZE / ETC.	UNIT \$	AMOUNT
1	250	D/S	COVER		2 color	1 color	PM 5		93 03
1	250	S/S	BACK COVER		2 color				80 10
2	250	D/S	2 inside		2 color	1 side	V	14 65	173 95
3	250	S/S			2 color	1 side	LS	40 45	134 24
							2 color		70 00

PROCEDURE	DESCRIPTION	POSITION	NUMBER	UNIT \$	AMOUNT
BIND / VELO / SPIRAL	COVER - COLOR / TYPE		250	1.23	307 50
DRILL					
STITCH PAD			250	.03	7 50
CUT					
FOLD					
COLLATE	HAND INSERT		1750	.05	87 50
TYPESETTING					
PMT, PASTEUP					
LAZERGRAPHICS®					
VENDED MISC.	24 plates @ 15.00				360 00

SPECIAL INSTRUCTIONS:

SUB TOTAL

SALES TAX

2299 44

—

RIDGES COLOR CENTER

TEMPEST PARK

2212 SOUTH WEST TEMPLE UNIT 35 • PHONE 486-8796 • SALT LAKE CITY, UTAH 84115

INVOICE

R017516

SOLD
TO

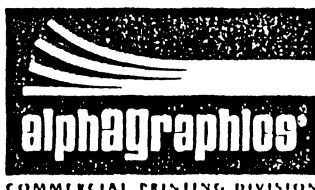
• ALPHA GRAPHICS
#9 Exchange Place
Suite 1110
Salt Lake City, Utah 84111

73543

DATE OF ORDER	CUST. ORDER NO.	TERMS	DATE	
	Jim	2/10,NET/30	7/14/68	
QUANTITY	DESCRIPTION		UNIT PRICE	AMOUNT
	Camera & Stripping			
	line shots			77.00
	1/2 tones			20.00
	stripping			80.00
				<u>177.00</u>
	William Cooper Wineay			

LATE CHARGES OF 1% PER MONTH
WILL BE CHARGED ON ALL PAST DUE
ACCOUNTS.

on accounts exceeding approved terms.



#9 Exchange Place, Suite 1110
Salt Lake City, UT 84111
(801) 363-8880

"Professionals Serving Professionals"

INVOICE

71103

ACCOUNT #

B00900

Order

Taken by: Jim/Marsha

Date:

7/11/88 1 20 98

NAME: Brown, Smith & Hanna

CUSTOMER P.O. #

Guy Davis

ADDRESS: 175 East 400 South #401 84111

ATTENTION: Charles Brown

QUANTITY	DESCRIPTION
250	Prospectuses Re: William Cooper Winery
ENTERED JUL 1988	

CHARGE TERMS: Net 10th of month following date of invoice. Purchaser hereby agrees to be bound by the Consumer Credit Code of the State of Utah and Utah Commercial Code. A service charge of 1½ percent per month will be charged on all past due amounts. If account is referred to collection, purchaser agrees to pay any collection costs incurred including reasonable attorney fees, filing fees and court costs. REMIT TO: #9 Exchange Pl., Suite 1110, Salt Lake City, UT 84111, (801) 363-8880.

X

Customer Confirmation Signature

TAX

EXEMPT #

SUB TOTAL	3796	00
TAX	237	25
TOTAL	4033	25

EXHIBIT "C"

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IN THE THIRD CIRCUIT COURT OF SALT LAKE COUNTY
SALT LAKE CITY DEPARTMENT, STATE OF UTAH

ALPHAGRAPHICS COMMERCIAL	:	FINDINGS OF FACT AND
PRINTING DIVISION, a Utah	:	CONCLUSIONS OF LAW
corporation,	:	
Plaintiff,	:	
	:	
v.	:	
	:	
CHARLES C. BROWN, an individual,	:	
and BROWN, SMITH & HANNA, a Utah	:	
professional corporation,	:	Civil No. 883012610CV
	:	
Defendants.	:	Judge Floyd H. Gowans

The above referenced matter came on for trial before the Honorable Judge Floyd H. Gowans, without a jury, on July 18, 1989 at 9:30 a.m. and again on August 9, 1989 at the hour of 8:30 a.m., plaintiff being represented by and through its counsel of record, Scott O. Mercer of Kesler & Rust, and defendants being represented by and through their counsel of record, Budge W. Call of Brown, Smith & Hanna. The court, having heard the testimony of the witnesses, and the argument of counsel, and good cause appearing, the court makes the following findings of fact and

conclusions of law:

FINDINGS OF FACT

1. Sometime in June or July, 1988, an employee of Brown, Smith & Hanna named René telephoned a printing company to discuss the printing of a prospectus.

2. The printing company was not equipped to handle the order.

3. James B. Luebcke, an employee of the said printer, who was then changing employment to Alphagraphics, contacted Brown, Smith & Hanna and stated that Alphagraphics was equipped to do the work.

4. Brown, Smith & Hanna accepted Alphagraphics as the printer. On July 8, 1988, Alphagraphics picked up the prospectus materials from Brown, Smith & Hanna.

5. In the morning of July 11, 1988, James B. Luebcke, Kermit Johnson and Lawry East of Alphagraphics met in the office of Brown, Smith & Hanna with Jeffrey B. Brown, an attorney in that firm, to discuss the printing of the prospectus.

6. Mr. Luebcke and Mr. Johnson recall that Mr. Luebcke stated, at the conclusion of the July 11, 1988 meeting, "This has gone to a \$4,000 project. Who is responsible?" and that Jeffrey B. Brown answered, "Charlie is".

7. Mr. Jeffrey Brown does not recall any such

discussion but does recall that the printers represented to Jeffrey Brown that they had been informed that Charles Brown would be responsible.

8. There was no testimony that Brown, Smith & Hanna ever affirmatively informed the printer that it would not be responsible for payment.

9. The best case for the law firm is that they were noncommittal as to who would be responsible.

10. After the completion of the project, plaintiff sent invoices to Brown, Smith & Hanna and a demand letter in October, 1988.

11. At no time did Brown, Smith & Hanna inform plaintiff that it was billing the wrong people, or object to the amount of the invoice.

12. In fact, Mr. Charles Brown informed the printer, sometime after receiving the invoice, that he would see if he could get more money from his client to pay the bill. However, in that conversation, Mr. Charles Brown did not deny responsibility for the debt, or dispute the amount.

CONCLUSIONS OF LAW

1. Plaintiff Alphagraphics and defendant Brown, Smith & Hanna entered into a contract either by defendant's statement to plaintiff or by defendant's subsequent acquiescence in the

conduct of plaintiff.

2. Plaintiff is entitled to judgment against defendant Brown, Smith & Hanna as prayed for in plaintiff's complaint plus costs and interest from August 10, 1988.

DATED this _____ day of August, 1989.

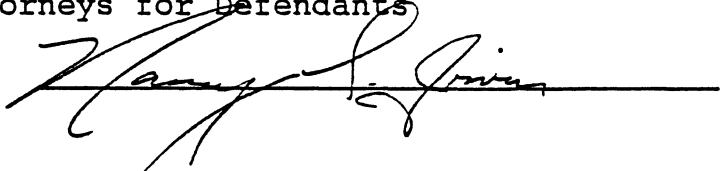
BY THE COURT:

JUDGE FLOYD H. GOWANS

CERTIFICATE OF MAILING

I hereby declare that I caused to be mailed a true and correct copy of the foregoing FINDINGS OF FACT AND CONCLUSIONS OF LAW in Civil No. 883012610CV, postage prepaid, this 14th day of August, 1989, to:

Budge W. Call
BROWN, SMITH & HANNA, P.C.
City Centre I, Suite 401
175 East 400 South
Salt Lake City, Utah 84111
Attorneys for Defendants

A handwritten signature in dark ink, appearing to read "Floyd H. Gowans", is written over a horizontal line.

l:findings.alp

EXHIBIT "D"

Budge W. Call (5047)
BROWN, SMITH & HANNA, P.C.
Attorneys for Defendants
City Centre I, Suite 401
175 East 400 South
Salt Lake City, Utah 84111
Telephone: (801) 355-5656

IN THE THIRD CIRCUIT COURT, STATE OF UTAH
SALT LAKE COUNTY, SALT LAKE CITY DEPARTMENT

ALPHAGRAPHS COMMERCIAL)	
PRINTING DIVISION, a Utah)	
corporation,)	OBJECTION TO FINDINGS OF
)	FACT AND CONCLUSIONS OF
Plaintiff,)	LAW
vs.)	
CHARLES C. BROWN, an individual,)	Civil No. 883012610CV
and BROWN, SMITH & HANNA, a Utah)	
professional corporation,)	Judge Floyd H. Gowans
Defendants.)	

Defendant, by and through counsel, Budge W. Call,
objects to plaintiff's Findings of Fact and Conclusions of Law as
follows:

1. Renee did not simply telephone a printing company,
but specifically Jim Luebcke of Progressive Printing who
unbeknownst to defendant, Brown, was then in bankruptcy. This
should not be confused with Alphagraphics. The phone call was to
obtain a quote for printing a prospectus. A quote of \$500.00 was
given.

2. Plaintiff's Finding of Fact No. 2 should be
stricken. The Court never made a finding as to Progressive
Printing's ability to handle the order. If this is left in, it

should be specified that it was Progressive Printing that was contacted by Renee of Brown, Smith & Hanna and it was Progressive Printing that was not equipped to handle the order.

3. Mr. Luebcke never contacted Brown, Smith & Hanna and stated that Alphagraphics was equipped to do the work. The Court never made this finding. No one from Alphagraphics contacted Brown, Smith & Hanna until the morning of July 11, 1988. Furthermore, it was James B. Luebcke as an employee of Progressive Printing that contacted Alphagraphics. Neither Charles Brown nor Brown, Smith & Hanna made the initial contact with Alphagraphics.

4. The statement that Brown, Smith & Hanna accepted Alphagraphics as the printer is not a Finding of Fact but a Conclusion of Law and should be stricken. Brown, Smith & Hanna never accepted Alphagraphics as the printer and the Court never made this finding. The second statement of paragraph 4 is also incorrect as a finding of fact. Alphagraphics did not pick up the prospectus from Brown, Smith & Hanna on July 8, 1988, in fact, it was James Luebcke of Progressive Printing that picked up the materials, not Alphagraphics. Furthermore, the materials were received from Guy Davis of William Cooper Winery on the premises of Brown, Smith & Hanna, not from Brown, Smith & Hanna. Charles Brown was not even present in the offices on July 8, 1988 and no one from Brown, Smith & Hanna met with Mr. Luebcke on July 8, 1988.

5. It was at the request of the plaintiff and Mr.

Luebcke of Progressive Printing that the meeting was held on the morning of July 11, 1988. The plaintiff desired to meet with Jeffrey B. Brown although it was explained to them that Jeffrey B. Brown was not the attorney involved in the matter. It was not until this meeting on the morning of July 11, 1988 that anyone at Brown, Smith & Hanna was contacted by Alphagraphics or was told that it was to be an Alphagraphics project.

6. The Court made no finding as to what was said in the meeting on July 11, 1988. The testimony is in dispute as to what was said at this meeting. If plaintiff is allowed to put on its testimony as a finding of the Court, the testimony of Jeffrey Brown should be included where it is stated that at no time was a price discussed and at no time was he asked who would be responsible and at no time did he say that Charlie would be responsible.

7. The Court made no such finding. Jeffrey Brown specifically does recall that no questions were asked as to who would be responsible. It was stated to him by the plaintiffs that it was their understanding that Charles Brown would be responsible. Jeffrey Brown never stated that Brown, Smith & Hanna would be responsible. Jeffrey Brown specifically recalls being called later that day by the plaintiffs to be informed that it would be a \$2,000.00 or \$3,000.00 project.

8. Although there is no testimony that Brown, Smith & Hanna never affirmatively informed Alphagraphics it would not be responsible for payment, Alphagraphics never affirmatively stated

that they would look solely to Brown, Smith & Hanna for payment. Brown, Smith & Hanna is not legal counsel for the plaintiff and is not obligated to provide the plaintiff legal advice.

9. Plaintiff's paragraph No. 9 should be stricken. This is not a Finding of Fact but a mischaracterization of the defendant's case. The Court made no finding as to defendant's "best case".

10. After the completion of the project, plaintiff failed to notify Brown, Smith & Hanna that the prospectuses were ready. The prospectus was picked up by the client, Guy Davis of William Cooper Winery, from the plaintiff. Brown, Smith & Hanna has never received copies of the prospectus. The invoice sent to Brown, Smith & Hanna was sent to the attention of Guy Davis, the client who received the prospectuses. A demand letter was sent to Charles Brown and requested payment from Charles Brown personally not from the firm, Brown, Smith & Hanna.

11. Plaintiff was aware that the work was being done on behalf of Guy Davis of William Cooper Winery. Plaintiff received the order from Guy Davis and delivered the prospectus to Guy Davis of William Cooper Winery. At no time was Brown, Smith & Hanna informed that plaintiff was looking solely to Brown, Smith & Hanna for payment of the bill. There is also no evidence that plaintiff ever attempted to contact the client for payment. Again, Brown, Smith & Hanna is not obligated to advise plaintiff of its legal rights.

12. Paragraph No. 12 should be stricken. It is not a

Finding of Fact. On July 18, 1989, before dismissing Charles Brown from this suit, the Court made a specific finding that Charles C. Brown was merely acting as a conduit in attempting to get more money from his client to accommodate the plaintiff. There is no testimony that at this time Charles Brown accepted responsibility for the debt personally or on behalf of Brown, Smith & Hanna.

CONCLUSIONS OF LAW

1. Defendant also objects to plaintiff's Conclusions of Law. The fact that plaintiff's Conclusions of Law are so vague and ambiguous shows that even the plaintiff's were confused as to the Court's legal theory in finding the defendant responsible. It states plaintiff, Alphagraphics, and defendant, Brown, Smith & Hanna, entered into a contract either by defendant's statement to plaintiff or by defendant's subsequent acquiescence in the conduct of plaintiff. It does not state what statements caused to the formation of a contract or specifically what acts on behalf of Brown, Smith & Hanna constitutes a contract. Defendants dispute whether a contract was ever entered into between the plaintiff, Alphagraphics, and defendant, Brown, Smith & Hanna. The defendant, Brown, Smith & Hanna is entitled to know what statement or act constituted this contract.

DATED this 21 day of August, 1989.

BROWN, SMITH & HANNA

By: Budge W. Call
Budge W. Call

MAILING CERTIFICATE

I hereby declare that I caused to be mailed, postage prepaid, first class, a true and correct copy of the foregoing Objection to Findings of Fact and Conclusions of Law, in Civil No. 883012610CV, this 21st day of August, 1989, to:

Scott O. Mercer, Esq.
KESLER & RUST
2000 Beneficial Life Tower
36 South State Street
Salt Lake City, Utah 84111

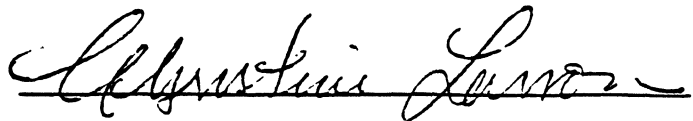


EXHIBIT "E"

1 Printing?

2 A Basically from about 1958 through June of 1988.

3 Q And what dates were you--and what was your position at
4 Progressive Printing in 1988?

5 A I was the vice president.

6 Q And your dates that you were employed by Alphagraphics?

7 A Approximately the last week of June, 1988, through
8 February, 1989.

9 Q What was your--the position that you held with
10 Alphagraphics?

11 A I was a vice president in the commercial printing
12 division of Alphagraphics.

13 Q Who is your current employer?

14 A I am with the firm of Seagull Printing.

15 Q What is your position there?

16 A I'm a commercial sales representative.

17 Q And you started with them in February of '89?

18 A The last week, I believe, of February, 1989.

19 Q So, you currently have no affiliation with Alpha-
20 graphics?

21 A That's correct.

22 Q While you were employed at Progressive Printing or
23 during that interim period, between Progressive Printing and
24 Alphagraphics, were you ever contacted by Brown, Smith & Hanna
25 to print a prospectus?

1 A About the last--the end of June or the very first week
2 in July, I was contacted by a lady by the name of Renae and asked
3 to furnish a quotation on producing 20 copies of a 500--or excuse
4 me, 120-page prospectus. The--

5 Q Who did you understand Renae to be?

6 A Renae represented herself to be an employee of Brown,
7 Smith & Hanna.

8 Q And--

9 A She said Ranae of Brown, Smith & Hanna.

10 Q --she requested a quote, price quote?

11 A A price quote to produce--

12 Q And you gave her a price quote?

13 A I did.

14 Q What was that?

15 A It was five hundred plus dollars.

16 Q That was for copying?

17 A It was for copying.

18 Q Of 20 pages of a 120-page prospectus?

19 A That's correct.

20 Q Were you contacted after giving that quote? Excuse me.
21 What was the date, the approximate date of that telephone call?

22 A It was approximately a week prior to the inception of
23 the work, so it would have been about the third or so of July,
24 whatever.

25 Q Of 1988?

1 A Of '88, that time frame.

2 Q And what was the next contact from Brown, Smith & Hanna?

3 A It was on a Friday, I believe, the 8th of July, 1988.

4 Again, it was Renae instructing me to come over to Brown, Smith

5 & Hanna's office and that they had a job to be picked up.

6 Q Did you then go over to Brown, Smith & Hanna, as

7 requested?

8 A I did.

9 Q And what happened in that meeting?

10 A I--excuse me--I frogged.

11 I contacted--I went into the offices of Brown, Smith

12 & Hanna, and asked for Renae, and she came forward to the

13 reception area. I introduced myself as Jim Luebcke. She said

14 rather than myself giving you the work, our client--

15 MR. CALL: Objection, your Honor. Her conversation is

16 hearsay.

17 MR. MERCER: Your Honor, this is not hearsay if it's

18 offered by an employee of this defendant against the defendant--

19 THE COURT: Well, and that it would appear from--

20 MR. CALL: Your Honor, it's not sufficient foundation

21 for her to be an agent.

22 THE COURT: It would appear that it's just introductory

23 as to what happened next, so since it's not offered for the truth

24 of the matter alleged, he may answer.

25 THE WITNESS: Thank you. As I stated, I entered the

1 offices of Brown, Smith & Hanna, I asked for Renae, was greeted
2 by her at the reception area, in the reception area. I introduce
3 myself, and at that point, Renae stated that their client,
4 Mr. Guy Davis, happened to be in the office and he might as well
5 give me the work rather than her presenting it to me.

6 So, in the Brown, Smith & Hanna reception area--can I
7 continue like this?

8 MR. MERCER: Please.

9 THE WITNESS: In the Brown, Smith & Hanna reception
10 area, I introd--was introduced by Renae to--

11 MR. CALL: Your Honor, I move to strike his testimony.
12 on her conversation.

13 THE COURT: On what grounds?

14 MR. CALL: He's talking--he's going, proceeding on the
15 contract with Brown, Smith & Hanna and Alphagraphics.

16 MR. MERCER: Your Honor, he's describing the contact
17 and again--

18 THE COURT: The objection is overruled. It's just
19 simply what took place in this office which brought the parties
20 together. You may continue.

21 THE WITNESS: Okay. At that point, I seated myself
22 beside Mr. Davis and Mr. Davis unveiled a project that in no way
23 represented the work as described to me over the telephone with
24 Renae or represented the quotation that I gave her.

25 And I explained that to Guy Davis. I said this--this

1 project is not what we talked about, it required colored printing,
2 it required enamel papers, it required--and also he increased the
3 quantity by--from 20 to 200 or 250.

4 Well, nonetheless, Mr. Davis stated the job--

5 MR. CALL: Your Honor?

6 THE COURT: Yes.

7 MR. CALL: I'll have to object to the testimony of
8 Guy Davis.

9 THE COURT: The objection is sustained.

10 Q (By Mr. Mercer) So after you received this project
11 from the office of Brown, Smith & Hanna, what did you do next?

12 A I received the project. I stated to Mr. Davis that
13 it was not the project that was discussed. I also stated to
14 Renae, who was in the reception area at that point, that this
15 was not the project that was discussed; nonetheless, I was
16 instructed to proceed.

17 Q And did you then proceed?

18 A Yes.

19 Q What did you do next?

20 MR. CALL: Objection, your Honor. He says he's
21 instructed to proceed. It's ambiguous.

22 THE COURT: Well--

23 MR. CALL: As to who--who instructed him to proceed.

24 THE COURT: --yes. Yes. That, since we have a
25 three-way conversation going on here, the objection is sustained.

1 Q (By Mr. Mercer) Who did instruct you to proceed,
2 Mr. Luebcke?

3 A Mr. Davis.

4 Q And was Renae present--

5 MR. CALL: Objection, your Honor. Hearsay. Move to
6 strike his answer.

7 THE COURT: Objection sustained.

8 Q (By Mr. Mercer) Did you have any further meetings
9 with the firm of Brown, Smith & Hanna, regarding this project?

10 A I did, the following Monday, July the 11th, 1988.

11 Q And who was present at that meeting?

12 A At that meeting, there was myself, Mr. Kermit Johnson,
13 president of Alphagraphics, Lawrence East, a--an employee of
14 Alphagraphics, Jeffery Brown, an employee of the firm of Brown,
15 Smith & Hanna, we met in the board rummer of Brown, Smith &
16 Hammer--Brown, Smith & Hanna.

17 Q And tell me again what date this was?

18 A The 11th of July, to the best of my recollection.

19 Q What day of the week was that?

20 A Monday.

21 Q That was the Monday after the Friday that you met with
22 Renae?

23 A That is correct.

24 Q And who did you understand Mr. Jeffery Brown to be?

25 A He was introduced to me by an employee, some employee

1 of Brown, Smith & Hanna, as the brother of--

2 MR. CALL: Your Honor, objection. He--there's no
3 foundation as far as this testimony on behalf of the plaintiff.

4 THE COURT: Well, the objection's overruled. The
5 question was, what was his understanding. This would just show
6 his--his state of mind as to who he was talking to, so--

7 THE WITNESS: It was my understanding that he was a
8 member of the firm and the brother of Charles Brown.

9 Q (By Mr. Mercer) Did you understand him to be an
10 attorney?

11 A I did.

12 Q And what took place at that meeting on July 11th?

13 A The text of the prospectus that Alphagraphics was
14 producing was flawed, and the firm of Brown, Smith & Hanna--

15 MR. CALL: Your Honor, objection as far as his
16 testimony on behalf of Alphagraphics. There's no foundation.

17 MR. MERCER: Your Honor, at the time--

18 THE COURT: I--I don't follow what--

19 MR. CALL: He--he is--he is an officer--he was an
20 officer of Progressive Printing. He's testifying on behalf of
21 Alphagraphics.

22 THE COURT: Well, he's been called as a witness. Why
23 can't he do that?

24 MR. CALL: Well, the foundation has been laid has been--
25 has been on behalf of Progressive Printing and not on

1 Alphagraphics.

2 MR. MERCER: Just for clarification, your Honor, he
3 became employed by--and his testimony is that he was employed
4 by Alphagraphics the last week of June, '88. This is testimony
5 regarding a meeting July 11, 1988.

6 THE COURT: The objection is overruled. He certainly
7 can testify as to what he heard and saw and discussed in this
8 matter, whether he's an employee or not, of Alphagraphics.

9 You may continue.

10 THE WITNESS: Okay. The prospectus was flawed. There
11 were quite some--a number of pages that had to be changed from
12 the original text that was given us to reproduce. Those pages
13 were given to us with instructions to print these copies by
14 Jeffrey Brown.

15 Q (By Mr. Mercer) And in this meeting, did you
16 introduce Mr. Kermit Johnson and Mr. Lowry East to Mr. Jeffrey
17 Brown?

18 A I did.

19 Q As representatives of Alphagraphics?

20 A That's correct.

21 Q And were you at that time employed by Alphagraphics?

22 A At that point, I was employed by Alphagraphics.

23 Q Did Jeff Brown give any further direction in that
24 meeting as to the printing operation?

25 A Well, we were given the pages and the instructions, I

1 can't quote verbatim, words, this is the new draft, this is what
2 we want printed, print it.

3 Q That was from Jeffrey Brown?

4 A That was from Jeffrey Brown.

5 Q Was Guy Davis or anyone from William Cooper Winery
6 present in this meeting?

7 A No.

8 Q And you were directed to proceed by Mr. Jeffrey Brown?

9 A Yes.

10 MR. CALL: Objection, your Honor.

11 THE WITNESS: Let--let--may I speak?

12 THE COURT: Well, there's an objection. What's the
13 objection?

14 MR. CALL: He's testifying on behalf of the witness.
15 He never said he was instructed to proceed. It's a leading
16 question.

17 THE COURT: Well, it was leading. It was leading.
18 Rephrase the question.

19 Q (By Mr. Mercer) Did you receive any understanding from
20 Mr. Jeffrey Brown as to what you were to do with the materials
21 given to you?

22 A Yes. The understanding that I received from
23 Mr. Jeffrey Brown was that these were the new materials to
24 replace materials given to us in their offices the prior Friday,
25 and we were to now produce the copies from the new materials.

1 Q Now, prior to your meeting with Mr. Jeffrey Brown on
2 July 11th, did you discuss payment arrangements with Alpha-
3 graphics?

4 A The morning of July 11th, prior to meeting with
5 Mr. Brown, Mr. Johnson and myself had a conversation as to who--
6 or rather, as to the scope of the project, it had increased
7 many, many-fold. We wanted to--Kermit, Mr. Johnson wanted to
8 find out--for me to find out who was going to be responsible
9 for this thing so we didn't get hung for the bill, and at their--
10 their--so that conversation took place. And then, in the
11 meeting with Mr. Brown, at the conclusion, when we were--

12 Q Just let me ask you that question. So then at the
13 conclusion of the meeting, did you discuss payment arrangements
14 with Jeffrey Brown?

15 A We--I received the materials to be reproduced and I
16 explained to Mr. Brown that the project had grown from its
17 original conception to almost a \$4,000 project. I asked him who
18 was going to be responsible, who would be the responsible party
19 for payment and he--

20 Q And what was his answer?

21 A His answer was--

22 MR. CALL: Objection, your Honor. Hearsay.

23 MR. MERCER: Your Honor, this is not hearsay under the
24 rules, it is an admission against interest by a party in a
25 representative capacity. I will cite the Court to--

1 of now, the objection is sustained as to Mr. Charles Brown.

2 You may proceed.

3 MR. MERCER: Thank you, your Honor.

4 Q (By Mr. Mercer) You may answer, Mr. Luebcke, what
5 the response was to your question.

6 A The response was "Charlie is".

7 Q Now, what did you understand Jeff Brown to mean when he
8 said Charlie?

9 MR. CALL: Objection.

10 THE WITNESS: Is there an objection?

11 MR. MERCER: I don't think so.

12 Q (By Mr. Mercer) What did you understand by the word,
13 Charlie?

14 MR. CALL: Objection, your Honor. For what--he's
15 asking--

16 THE COURT: As to what he meant, or as to what he
17 thought he meant? No, he may--he may testify to that, what the
18 impression was that he received.

19 MR. CALL: He's already--he's already--he's already
20 testified on Jeff Brown's answer as Charles--as Charlie--

21 THE COURT: Well, let's--

22 MR. CALL: --as the responsible party. Now, he's
23 asking him again.

24 THE COURT: Well, but--no, the objection is overruled.
25 He may answer this. This doesn't make it binding, but he

1 certainly may answer as to what he thought it meant.

2 Q (By Mr. Mercer) What did you understand Jeff to mean
3 by Charlie?

4 A His brother, Charles Brown.

5 Q Now, do you remember precisely what your question was
6 to Jeff Brown?

7 A I do.

8 Q And it was as you testified?

9 A That is correct.

10 Q And you remember precisely what the answer was from
11 Jeff Brown?

12 A Yes.

13 MR. CALL: Your Honor--

14 Q (By Mr. Mercer) And it was--

15 MR. CALL: --he's just re-going over the previous
16 testimony.

17 THE COURT: Well, it is--it is repetitious.

18 MR. MERCER: I'm just trying to--well, let me proceed,
19 your Honor.

20 Q (By Mr. Mercer) Why is it that you recall approximately
21 a year ago precisely what the question and answer were?

22 A I--why is it that I recall? Well, because--because
23 the--because it has not been a year since it became a contested
24 matter. When it became a contested matter, it was quite fresh.

25 Q Didn't you testify that you had just discussed that

1 very question with Mr. Kermit Johnson prior to this meeting?

2 A Yes.

3 Q So this was a specific--

4 A We were--we were determining who was going to be
5 responsible before we proceeded with the work.

6 Q And--

7 A We would not have proceeded with the work if we felt
8 that we were unsecured.

9 Q And that was a question you fully intended to ask,
10 going into the meeting?

11 A Yes, I was instructed to find out--to ask that question.

12 Q By Mr. Johnson?

13 A That's correct.

14 Q What would you have done had the answer been that the
15 client was responsible?

16 MR. CALL: Your Honor, that calls for speculation.

17 THE COURT: The objection's sustained.

18 Q (By Mr. Mercer) Ordinarily, as a matter of course in
19 your business--well, let me ask first, have you in your lifetime
20 of printing experience, ever printed prospectuses for law firms
21 before?

22 A Yes.

23 Q And what has generally been your practice--

24 MR. CALL: Your Honor, objection. I don't see how this
25 is relevant.

1 THE COURT: The objection is sustained because he has
2 testified now that he's receiving instructions from--from another
3 party as to the payment, and so what had been his--his own
4 practice with the other company in the past would not be material,
5 so the objection's sustained.

6 MR. MERCER: Thank you, your Honor.

7 Q (By Mr. Mercer) Did Alphagraphics then proceed with
8 the work?

9 A They did.

10 Q And was the work completed as requested?

11 A It was.

12 Q In the time requested?

13 A It was.

14 Q Did Alphagraphics then bill Brown, Smith & Hanna?

15 A Yes.

16 Q Let me show you what has been marked as Plaintiff's
17 Exhibit No. 1 and ask if you can identify that document?

18 A This is the--a copy of the invoice that was sent to
19 the office of Brown, Smith & Hanna.

20 Q This is the invoice that you testified, this is the bill
21 that Alphagraphics sent regarding this project?

22 A Yes.

23 Q And approximately what date was this invoice sent?

24 A This invoice would have gone out, I can't state exactly
25 what date. The work was--it would have gone out upon completion

1 of the job which would have been probably mid-July.

2 Q And does this invoice state Attention Guy Davis,
3 Charles Brown?

4 A It does.

5 Q And why does it say Attention Guy Davis, Charles Brown?

6 MR. CALL: Objection, your Honor. This--this hasn't
7 been introduced into evidence yet.

8 MR. MERCER: Oh, I'm sorry. I withdraw the question.

9 Your Honor, I move for the admission of Plaintiff's
10 Exhibit 1.

11 MR. CALL: Your Honor, I object. There's no foundation
12 on this invoice. It says order taken by Jim, Marsha.

13 There's no foundation as to who that is.

14 THE COURT: Well, foundation in what regard?

15 MR. CALL: As to who prepared this docu--as to who
16 prepared this.

17 THE COURT: Well, he's testified that this was the
18 invoice which was sent from the firm that he was employed by.

19 MR. CALL: Yeah, but he doesn't have personal
20 knowledge of the invoice being sent. It wasn't prepared by him.
21 There's no foundation to that effect.

22 THE COURT: Well, that's not defective. During the
23 normal course of business, he's--he's described what this is and
24 he works for the company. It may be received as evidence.

25 Q (By Mr. Mercer) Mr. Luebcke, who are Jim and Marsha?

1 A I'm Jim. Marsha McGregor is an employee of Alpha-
2 graphics in the--
3 Q And--
4 A Process the work.
5 Q --to your knowledge, did this invoice go out in the
6 normal course of business--
7 A Yes.
8 Q --Alphagraphics?
9 A Yes.
10 Q To your knowledge, did--excuse me, we were talking
11 about why this says Attention Guy Davis, Charles Brown.
12 A It's traditional in invoicing a corporation that you
13 have some way of identifying parties of interest so that the
14 accounting department can determine who the job--who the invoice
15 should be posted to.
16 Q And that's why this was done?
17 A Yes.
18 Q To your knowledge, did Brown, Smith & Hanna or
19 Charles Brown ever object to this invoice?
20 A No.
21 Q Did Brown, Smith & Hanna or Charles Brown ever pay
22 this invoice?
23 A No.
24 Q Did you ever verbally request payment after this
25 invoice was sent?

1 to him by counsel, and I don't see how this is really relevant,
2 as far as Charles Brown goes, and there's no--he has not shown
3 any authority that she has to bind Brown, Smith & Hanna, or
4 Charles Brown to the order. And I don't see how her conversa-
5 tions are relevant to the contract entered into, and it's hearsay.

6 MR. MERCER: Well, as to the relevance, your Honor,
7 it's certainly relevant, as I'm trying to get in my ratification
8 and apparent authority.

9 MR. CALL: The ratification went to whether Charles
10 Brown eventually ratified the contract, and her conversations
11 with him without showing the authority to bind Charles Brown
12 cannot work as a ratification on behalf of Charles Brown.

13 MR. MERCER: Your Honor, he's testified that she has--
14 she stated--her name was Debbie, she was in charge--

15 THE COURT: Well, there's--

16 MR. CALL: Your Honor, the complaint is a breach of
17 contract for the invoice and I don't see how even getting into
18 the ratification is even at issue in this case. They haven't
19 pled that, there's--there's--I mean, it's--

20 THE COURT: There's no question, Mr. Mercer, but what,
21 as an employee, her--her conversations can be testified to. It's
22 not hearsay and it could come in.

23 The problem the Court has is that we have absolutely
24 no individual, or have no idea who this individual is, other
25 than a name and that she works with Mr. Brown in making--in taking--

1 payables. Now, how you can spring from that meager knowledge
2 about this individual to--to now say that she's going to bind
3 either of the defendants, I--I'm at a loss as to follow you in
4 that jump. I mean, suppose you get the--the custodian on the
5 phone, obviously, a custodian can't bind the firm or can't bind
6 Mr. Brown. Now, she's obviously not a custodian, but I don't
7 know that she's got any more authority, and the fact that she
8 may say something over the phone, I don't see how that can be
9 binding upon the company.

10 I'm going to sustain the objection, not because of
11 hearsay or foundation, well, excuse me, it is because of founda-
12 tion because we have no evidence that she has any authority to
13 speak for the corporation or for Mr. Brown.

14 MR. MERCER: Thank you, your Honor.

15 Q (By Mr. Mercer) Mr. Luebcke, in your telephone
16 conversations, your six to ten telephone conversations with--in
17 calling the firm or Charles Brown, I assume that was the same
18 telephone number, you asked for Charles Brown every time?

19 A Yes.

20 Q And what was the response when you asked--would ask
21 for Charlie Brown?

22 MR. CALL: Objection, your Honor.

23 THE COURT: Oh, no. He may testify what the response
24 was.

25 THE WITNESS: That he was not available.

1 Q (By Mr. Mercer) And what would you then say?
2 A I would request that he call me.
3 Q And what would you say when you got Debbie on the line?
4 I mean, how--what would you say in order to speak to Debbie?
5 A I would place the phone call, I would ask for Debbie,
6 she would come on the line, I would say, Debbie, Jim Luebcke
7 with Alphagraphics. As Charlie--
8 MR. CALL: Your Honor, motion to strike his testimony
9 regarding this Debbie.
10 THE COURT: Oh, he can testify what he said to her.
11 Q (By Mr. Mercer) And why was it that you would ask for
12 Debbie?
13 A She was the person I--that--who claimed to be working
14 with Mr. Brown--
15 MR. CALL: Objection, your Honor.
16 THE COURT: No. No. He can testify as to what he
17 understood her position to be. I don't know--
18 MR. CALL: No. It's on hearsay, your Honor. He's--
19 he's--he's testifyin on what she claimed to be--what her--her
20 responsibility was.
21 THE COURT: Well, and I'm going--and I've indicated
22 previously, we'll allow that in. I don't see any problem with
23 that. Continue.
24 Q (By Mr. Mercer) Why would you ask for Debbie?
25 A She was the front person for Charles Brown.

1 Q And--

2 MR. CALL: Objection, your Honor. Could we have a

3 clarification on that?

4 THE COURT: Well, I suppose that does need a

5 description.

6 THE WITNESS: She--she was the person, I believed to

7 handled Mr. Brown's--his end of the business, his books.

8 Q (By Mr. Mercer) And how did you get that understanding?

9 A I was informed of that by her.

10 Q On how many occasions?

11 A I was informed of her capacity probably just, I would

12 assume, one time. I wouldn't have asked it again.

13 Q And you, from the date of approximately September 1,

14 through some time thereafter, you spoke with her approximately

15 six times?

16 MR. CALL: Your Honor, this is repetitious. He's gone

17 through this twice, already. I would move to move on.

18 THE COURT: Yeah. Let's--let's keep it going,

19 Mr. Mercer.

20 MR. MERCER: Well, with that foundation, your Honor, I

21 would ask the question again, what was Debbie's response--

22 MR. CALL: Objection--

23 MR. MERCER: --to you--

24 MR. CALL: --your Honor, foundation.

25 THE COURT: Well, let's--Mr. Call, let's let the

1 question come out. I don't--I can't rule until I know what he's
2 going to ask.

3 Q (By Mr. Mercer) What did Debbie generally say when you
4 asked about the payment of this invoice?

5 MR. CALL: Objection, your Honor.

6 THE COURT: Objection's still sustained.

7 MR. MERCER: Thank you, your Honor.

8 Q (By Mr. Mercer) Okay. Mr. Luebcke, did you ever speak
9 to Charles Brown, himself?

10 A I did.

11 Q Do you recall at approximately what date that was?

12 A I would assume that it was--I can't recall exactly.
13 Late September, mid to late September.

14 Q And was that a telephone call?

15 A It was a telephone conversation.

16 Q When you asked for Mr. Brown?

17 A Yes.

18 Q And tell me what took place in the telephone conversa-
19 tion?

20 A I--Mr. Brown took the--took the phone, received my
21 call. I introduced myself, stated my problem, that we had not
22 been paid on the work that we had done for himself, his firm,
23 and what needed to be done. Mr. Brown was somewhat apologetic,
24 that's--and stated that he had not anticipated a bill to be that
25 size and had not secured sufficient monies from his client to

1 pay the bill, but he would attempt to do that.

2 Q Did he ever state to you that he was not liable for the
3 bill?

4 A No.

5 Q Did he ever state that his firm was not liable for the
6 bill?

7 A No.

8 Q Did he object to the--strike that.

9 Did anyone at Brown, Smith & Hanna prior to this lawsuit
10 ever state that Brown, Smith & Hanna or Charles Brown was not the
11 responsible party for the bill that you were sending them?

12 A No.

13 Q Did Charles Brown's client, William Cooper Winery or
14 Mr. Guy Davis ever agree with you or anyone at Alphagraphics
15 that he or his company would be responsible for the bill?

16 MR. CALL: Objection, your Honor. Hearsay. It's
17 asking for the truth of the matter.

18 MR. MERCER: Asking if anyone from that firm or
19 Mr. Davis ever did agree to be responsible for the bill is yes
20 or no.

21 MR. CALL: Your Honor, that's a--that's a compound
22 question, and I'd ask him to break it down.

23 THE COURT: Well, and it's--it is not a party, they
24 are not a party to this action, so the objection is sustained
25 because it would be hearsay.

1 this, or a written response?

2 A No.

3 Q Now, you have testified that you--that Alphagraphics
4 sent this invoice, Plaintiff's Exhibit No. 1 some time in July;
5 were subsequent invoices sent out?

6 A We, through the normal course of business, would have
7 sent statements reflecting the due amount.

8 Q How often were statements sent out?

9 A Thirty days.

10 Q So, were other invoices sent that followed up on this
11 first invoice?

12 A Through the normal course of business, they would have
13 received further invoices, that's correct.

14 Q Was there ever any objection or response to any of
15 those other invoices?

16 A None.

17 MR. MERCER: I have no further questions.

18 THE COURT: You may cross.

19 CROSS-EXAMINATION

20 BY MR. CALL:

21 Q Going back to the--your initial discussion with
22 somebody at Brown, Smith & Hanna; you testified you talked to
23 Renae; correct?

24 A That's correct.

25 Q You never talked to Charles Brown when you went over

1 to the office; is that correct?

2 A That is correct.

3 Q You talked specifically with Guy Davis; correct?

4 A He--yes. Mr. Davis was in the office.

5 Q And it was your testimony that you were told to proceed
6 on the project by Guy Davis.

7 A Can I--

8 Q Just yes or no. Yes or no.

9 A There were--there were three people present.

10 Q I'm asking you , your earlier testimony.

11 A Yes.

12 Q Okay. At the time you went over--at the time Charles
13 Brown called to refer his client, it was understood to you that
14 the printing was to be done for a client of Brown, Smith & Hanna,
15 not Brown, Smith & Hanna; correct?

16 A That is correct.

17 Q Did you, at the time, tell Charles Brown that you worked
18 for Alphagraphics?

19 A Between Friday, the 8th of July, and Monday--

20 Q At the time--at the time Charles Brown called to get a
21 bid, you did not tell him you worked for Alphagraphics, did you?

22 A Charles Brown did not call. Renae did.

23 Q You did not tell her you worked for Alphagraphics?

24 A No.

25 Q Isn't it true that at the time, you were in--Progressive

1 Printing was in bankruptcy?

2 A That is correct.

3 Q And it was a Chapter 7?

4 A It was a Chapter 7 conversion from a Chapter 11.

5 Q But at the time, it was a Chapter 7?

6 A In July, yes.

7 Q Isn't it true that you didn't become an officer of
8 Alphagraphics until September 1st, 1988?

9 A An officer, yes.

10 Q Isn't it true that the initial bid you gave to Charles
11 Brown was approximately \$500?

12 A Approximately, yes.

13 Q And the changes discussed by Guy Davis at the time you
14 met with him in the office, those changes were never communicated
15 to Charles Brown by yourself, isn't that true?

16 A That's incorrect. Renae was present at the meeting.

17 Q To Charles Brown?

18 A Charles Brown was out of town.

19 Q So, he never was informed of those changes; is that
20 correct?

21 A That's correct.

22 Q Now, over the weekend, you say you contacted Kermit
23 Johnson of Alphagraphics; is that correct?

24 A Yes.

25 Q And Charles Brown was not notified of your--your

1 referral, or your contacting Alphagraphics, was he?

2 A No.

3 Q Did you contact Charles Brown tell him--to tell him
4 that you contacted Alphagraphics over the weekend?

5 A No.

6 Q And when you met with Jeff Brown on July 11th, 1988,
7 didn't you wonder who was to be responsible for the bill?

8 A Yes.

9 Q So,--so, you did not have a contract--it was not
10 your understanding then that you had a contract with Charles
11 Brown at the time; correct?

12 A It was my understanding that I had a contract with
13 Charles Brown. At the time, I was confirming the contract at
14 the meeting on July 11th.

15 Q But you--you earlier testified that you talked with
16 Mr. Johnson, yourself, and you were trying to determine who
17 would be responsible for the bill; correct?

18 A We were--

19 Q What--

20 A We wanted to confirm responsibility. We always
21 assumed it was the firm or Mr. Brown.

22 Q You never assumed it would be the client who would
23 be responsible--

24 A Never.

25 Q --for the bill?

1 of the work had been done over the weekend, before you met with
2 Jeff Brown?

3 A All the preparatory work, the paper ordering, the color
4 printing portion of it was done over the weekend.

5 Q And this was before you met with Jeff Brown?

6 A Yes.

7 Q Who--who performed the work in this order?

8 A Alphagraphics.

9 Q So, your testi--you never received a writing from
10 Charles Brown or Jeff Brown stating that Charles Brown or
11 Brown, Smith & Hanna would be liable; is that correct?

12 A Received in writing?

13 Q A writing. You never--you never got a signature from
14 either one stating that Charles Brown would be liable; isn't that
15 correct?

16 A That's correct.

17 Q And you never got a writing from either one stating
18 that Brown, Smith & Hanna would be responsible; correct?

19 A No. We went on faith.

20 Q This is a--this is a breach--you understand this is a
21 breach of contract suit; is that correct?

22 A Yes.

23 MR. MERCER: Objection, your Honor. This witness is
24 not qualified as a legal expert.

25 THE COURT: Well, that doesn't call for a legal expert

1 to answer. He just asked what he understood the contract to be,
2 and he may answer what he thought it was.

3 THE WITNESS: Well, my--the--are you asking me for my
4 understanding of--

5 THE COURT: You've already answered.

6 MR. CALL: I'm--I'm--I'm--

7 THE COURT: You understood it to be a breach of
8 contract suit.

9 Q (By Mr. Call) When you met with Guy Davis, was there a
10 completion date given for the prospectus?

11 MR. MERCER: Objection, your Honor. We need a time
12 frame on that question; which meeting.

13 THE COURT: Yes. If you'll rephrase the question.

14 Q (By Mr. Call) When you met with Guy Davis on the 8th
15 of July in Charles Brown's office, and he told you to go ahead
16 with the project, did he give you a completion date?

17 MR. MERCER: Objection on characterization of the
18 testimony. I don't believe there is any testimony that Guy
19 Davis told him to proceed with the project. The Court struck
20 that testimony as hearsay.

21 THE COURT: Well, I did originally, but then Mr. Call
22 re-asked the question on cross-examination and it's been answered
23 now, so he may answer this question.

24 THE WITNESS: Would you re-ask that question, please?

25 Q (By Mr. Call) Yes. On your meeting on July 8th, 1988,

1 with Guy Davis in Charles Brown's office, when he told you to
2 proceed with the project, did he give you a completion date?

3 A There was a meeting the morning of Tuesday, the 12th
4 of July, that they needed sufficient copies for--

5 Q Did he give you a completion date?

6 A Yes. July 12th.

7 Q In your letter of October 13th, 1988, which has been
8 introduced into evidence as P-2, you earlier testified that you
9 were the author of this letter; is that correct?

10 A That's correct.

11 Q And you said on Monday, July 11th, following the
12 placement of the order--that would be the order by Guy Davis;
13 correct? You were out of town at the time, and at that meeting
14 we reviewed the project, we explained that it had expanded to
15 an approximately \$4,000 job and asked who was responsible for
16 payment of the bill. So, you didn't know at the time of the
17 meeting on July 11th who would be responsible; correct?

18 A Again, we had functioned on the assumption, from the
19 very beginning, that it would be Brown, Smith & Hanna. When the
20 job expanded--

21 Q Just answer yes or no.

22 A Re-ask the question again.

23 Q At the time of your meeting on July 11th, you didn't
24 know who was to be responsible for the bill?

25 MR. MERCER: Objection, your Honor. This is the third

1 or fourth time this--

2 MR. CALL: Your Honor, I--

3 MR. MERCER: --precise question has been asked and
4 answered. The witness has stated over and over that they were
5 confirming in the meeting of July 11 that the firm was respon-
6 sible. It's been his testimony numerous times.

7 THE COURT: Well, it is cross-examination and I don't
8 know that he's worn out his prerogatives under cross-examination.
9 He may ask the question again.

10 THE WITNESS: I'm going to answer yes.

11 Q (By Mr. Call) And who was to be responsible for the
12 bill?

13 A Not being a legal expert--

14 Q No. Your understanding.

15 A My understanding that it would--that the responsible
16 party, in some way, was the firm of Brown, Smith & Hanna, and/or
17 one of the members of the firm of Brown, Smith & Hanna. We
18 didn't care which. We wanted someone of substance.

19 Q And what was your understanding after the meeting?

20 A Basically the same.

21 Q So, your question was never answered, or--

22 A No. It was answered "Charlie is". Now, in what
23 capacity Charles Brown would have--in what capacity my under-
24 standing was not--to me, Charles Brown and the firm of Brown,
25 Smith & Hanna were one and the same, when I was meeting in their

1 offices.

2 Q Now, when the prospectuses were completed, did you
3 deliver those to Brown, Smith & Hanna?

4 A No. It was such an emerge--emergency situation, that
5 the client of Brown, Smith & Hanna came to our facilities to
6 pick the copies up to attend a meeting.

7 Q Isn't it true that the prospectuses were delivered
8 directly to the client, William Cooper Winery?

9 A I have--do not have knowledge of that.

10 Q You just know someone came and picked it up?

11 A Yes.

12 Q And you didn't inquire as to who--who was picking it
13 up?

14 A At that point, during the normal course of business, I
15 was out of the picture.

16 Q So, you don't know who actually got the prospectus
17 after it was completed?

18 A It would be hearsay.

19 Q Isn't it true that at this--at this meeting on July
20 11th, Jeff Brown never did say that Brown, Smith & Hanna would
21 be responsible?

22 A His only statement to me, as far as responsibility,
23 was "Charlie is".

24 Q Okay.

25 MR. CALL: Thank you.

1 and July 20?

2 A Yes. There are.

3 Q Why are there two dates?

4 A The first date is an inception date. The second date,
5 I would presume was a completion date.

6 Q So, the billing would have gone out some time on or
7 about the completion day?

8 A About the 20th.

9 Q Was it unusual to you that William Cooper Winery would
10 have picked up that initial 20 copies?

11 A No. They were the--they were the end user.

12 Q And did you ever receive any telephone call that the
13 proper--that the project was not received?

14 A Oh, no.

15 Q And when you stated that you were out of the picture,
16 were you the one that's responsible for delivering the
17 project?

18 A No.

19 MR. MERCER: I have no further questions.

20 THE COURT: Any further cross?

21 MR. CALL: Yes. Just a few questions.

22 RECROSS-EXAMINATION

23 BY MR. CALL:

24 Q You stated on July 8th, 1988, were you employed by
25 Alphagraphics, but you never disclosed that to Charles Brown or

1 the office of Brown, Smith & Hanna, when they called; correct?

2 A That's correct.

3 Q Okay. And on the invoice, the date 7-20-88, you say
4 that's the completion date?

5 A To the best of my knowledge.

6 Q Yeah. You testified earlier that Guy Davis gave you a
7 completion date of the 12th, Tuesday; is that correct?

8 A That's correct.

9 Q You stated that it wouldn't be unusual to let William
10 Cooper Winery come and pick up the prospectuses after they were
11 finished; correct?

12 A There--them--they being the end user, no, that would not
13 be unusual.

14 Q Okay. You--you have an understanding that Brown,
15 Smith & Hanna is the party you contracted with for the
16 prospectuses, and not the client, but you let the client come
17 and pick up the prospectuses without contacting Brown, Smith &
18 Hanna; is that correct?

19 A I--that is probably correct.

20 Q You didn't tell Brown, Smith & Hanna the prospectuses
21 were ready for you to come pick up?

22 A I--I cannot--that--what am I trying to say? I--I'm
23 not involved in that portion of the production of the work, okay?
24 I sold the job, I made the arrangements, I--you know--

25 Q Just--just answer--just answer yes or no.

1 Alphagraphics?

2 A Yes, sir.

3 Q You stated that you were doing this project with
4 Mr. Luebcke?

5 A Yes, sir.

6 Q And did Mr. Brown answer the questions that you put to
7 him?

8 A He started to, but then we determined quickly, or he
9 determined that there were just too many questions to resolve
10 over the telephone, and he said he would come in first thing
11 Monday morning.

12 Q And was there a Monday morning meeting?

13 A No. In fact, I have a strong recollection that I was--
14 I instructed our front counter people to pull me out of my normal
15 sales meeting when Mr. Brown came in, but that didn't happen.

16 Q What did happen?

17 A We called the firm of Brown, Smith & Hanna to be told
18 that Mr. Brown had been called out of town, and at that point, a
19 meeting was set up--I don't recall whether we were told then that
20 Charles Brown was called out of town, I just know that a meeting
21 was set up at 3:00 that afternoon, in the firm's office.

22 Q Did you attend that meeting?

23 A I did.

24 Q Who else attended the meeting?

25 A Laurie East, Jim Luebcke, and a Mr. Jeff Brown.

1 Q And did you have discussions with Mr. Luebcke prior to
2 the meeting about finding who would be responsible for payment?

3 A I made it very clear to Mr. Luebcke that in my
4 experience of reproducing memorandums, it was very, very
5 important to know whether it was the firm or the client, because--

6 Q Why was that?

7 A --if we were not careful, at the end, we could end up
8 with stock in a company if it were indeed the client.

9 Q What does Alphagraphics generally do if the firm does
10 not take responsibility and says the client is--its client is
11 responsible?

12 A The nature of this type of printing is very speculative
13 in nature, very much like our same policy with politicians; we
14 get our money up front, at least a 50% deposit.

15 Q If it's the client?

16 A If it's the client.

17 Q And if it's the law firm?

18 A I--we've changed that policy, but it used to be that
19 the--if it were a law firm that appeared to be a substantial
20 law firm, and I guess our guide by that was the number of names
21 on the door, and appearance of the office, it was--you know,
22 normally not a concern.

23 Q It was not a concern at the time that we're discussing
24 here?

25 A I wanted clarification that it was indeed the firm.

1 product had in fact been delivered and received?

2 A No.

3 MR. MERCER: I have no further questions.

4 THE COURT: You may cross.

5 CROSS-EXAMINATION

6 BY MR. CALL:

7 Q You testified that you called and talked to Charles
8 Brown Saturday morning; is that correct?

9 A Yes, sir.

10 Q And the basis of your conversation dealt with legal
11 questions regarding the lay-out, the formatting of the
12 printing; correct?

13 A Correct.

14 Q You went to the meeting Monday morning--you went to the
15 meeting on Monday to decide whether the firm or client was
16 responsible; correct?

17 A That meeting took place Monday afternoon.

18 Q Yeah. And you wanted to find out if the firm or the
19 client was responsible; correct?

20 A There were many things to--

21 Q Just--

22 A --discuss at that meeting.

23 Q --answer the question, please.

24 A Yes. I did. I testified to that.

25 Q Okay. Let's--now, objections--you testified that there

1 were no objections made to the invoices sent to Brown, Smith &
2 Hanna; is that correct?

3 A That is correct.

4 Q You testified that the prospectuses were delivered on
5 time; correct?

6 A That's correct.

7 Q Who were they delivered to on time?

8 A The 20 copies that were so critical, were--

9 Q Yeah.

10 A --picked up.

11 Q And they were delivered to Guy Davis; correct?

12 A No. He picked them up in person at our show right--
13 at our shop, right on the production floor.

14 Q Okay. Well, he--he came down to your office, but they
15 were delivered to him?

16 A That's correct.

17 Q Okay. Did Guy Davis make any objections on the copies?

18 MR. MERCER: Objection on hearsay.

19 THE COURT: Well, it--since he is not a party, anything
20 that he said obviously would be hearsay. It doesn't appear,
21 Mr. Call, at this point, that there's any--any question about
22 the quality of the work. We haven't had any issues raised on
23 that, so unless you're going to bring that up later, I don't see--

24 MR. CALL: Well, in an affidavit filed by Guy Davis
25 previously, he stated that he has had to go back numerous times

1 THE COURT: Thank you.

2 MR. MERCER: Your Honor, since this was not raised the
3 first time, does the Court need me to respond to the statute of
4 frauds argument?

5 THE COURT: No. I don't think at this point.

6 Of course, at this point in the proceedings, on a
7 motion to dismiss, the Court must review the evidence in the
8 light most favorable to the plaintiff. That doesn't necessarily
9 mean that's the way it'll finally wash out; but at least at this
10 point in the proceedings, that's the--that is the requirement.

11 Now, as to the defendant, Charles Brown, there is no
12 question but what there--there was an original, or a--yes, an
13 original contact between Mr. Luebcke and Mr. Brown. Well, let's
14 backtrack on that, I'm getting the names wrong here.

15 There is no question but what the firm, through this
16 Renae makes a contact with Mr. Luebcke, and as a result of that,
17 a quote is formulated. When the meeting takes place and the
18 nature of the work is now seen first-hand, it is apparent that
19 the nature of the work as originally outlined in the quote, and
20 what is now perceived, is substantially different.

21 Now, Mr. Brown, if he is in agreement with the original
22 contact, with the original quote, certainly, by everyone's
23 testimony was not present when the work mushrooms into a much
24 bigger job, and whether it becomes a \$4,000 job or not, that's--
25 that's another point; but there's no question but what it becomes

1 a substantially different job, and so there does not appear that
2 there's any--ever any meeting of the minds between Mr. Brown and
3 the plaintiff as to the nature of the work.

4 Now, of course, that still can be overcome as far as
5 the plaintiff's concerned if they show that an agent of the
6 plaintiff, or the agent of Mr. Brown, excuse me, authorizes the
7 work.

8 There appears to be no question but what Jeffrey Brown,
9 who, as far as the Court knows at this point, is a member of this
10 firm and authorized to speak for the firm. There's no question
11 but what in the meeting on Monday morning, he approves, together
12 with Mr. Davis, the nature of the work to be done. But there is
13 no evidence before the Court that he is authorized to bind
14 Mr. Charles Brown individually to this--to this contract.

15 Now, there's been a great deal said about the--the
16 special relationships between attorneys and clients and attorneys
17 and attorneys and attorneys and the Court; but the Court does not
18 see that that has really any bearing on this case, while Mr. Brown
19 has those obligations because of his position to his client, to
20 other attorneys, and to the Court, that--that in no way affects
21 Mr. Jeffrey Brown saying "Charlie is" in response to the question
22 who's going to take care of this.

23 Next, there appears to be, from the evidence, a
24 corporation involved as far as the law firm. We've seen no
25 certificates, et cetera, but from the testimony, this appears to

1 be a corporation, and Mr. Charles Brown appears, again, to be an
2 officer of that corporation. There are certain requirements in
3 order to pierce that corporate veil, in order to get to one of
4 the officers of a corporation, to make them individually
5 responsible.

6 The Court does not find, in any stretch of the
7 imagination, can the statement of another individual bind
8 Mr. Charles Brown to the debts of the corporation, should we find
9 that the corporate--corporation is eventually responsible in
10 this matter.

11 And so the motion to dismiss Charles Brown from the
12 complaint is granted.

13 Now, as to the firm, the other defendant, Brown, Smith
14 & Hanna, this--this, the Court feels is the more difficult
15 question. Again, from the evidence which is before the Court at
16 this point, Mr. Jeffrey Brown is an officer of that corporation
17 and has the power under the law to bind the corporation as an
18 officer. While he does not expressly say Brown, Smith & Hanna
19 will be responsible, nevertheless, at his instigation, these
20 individuals all meet in his office. When the question is asked,
21 who will be responsible with the client present, Mr. Guy Davis
22 being present, and no testimony of any response from him as to
23 my company will be responsible or I will be responsible; rather
24 Mr. Jeffrey Brown responds by saying "Charlie is".

25 Now, the Court has found that Charlie cannot be bound

1 by--by Mr. Jeffrey Brown; but Mr. Jeffrey Brown certainly can bind
2 the corporation, and his actions, the things which he says
3 certainly, while not express, certainly do imply that the law
4 firm is going to be responsible for this, because he's mentioning
5 another member of the law firm, he's mentioning an officer of
6 the law firm, the original contact comes from the law firm, and
7 when the--the billings and that are all--all finalized, the law
8 firm is still the individual they're looking at.

9 And the Court finds that this all comes from this--
10 this meeting where Jeffrey Brown says, "Charlie is". And the
11 Court indicated that, I think this is a much more difficult
12 question; but that--that response, the Court feels, certainly
13 would give the plaintiffs the reason to believe that the
14 corporation is also responsible in this matter.

15 And so the motion to dismiss as to the law firm is
16 denied.

17 Now, one other comment, I had a note here I wanted to
18 make about Mr. Brown, I've already ruled on that; but just for
19 the record. There has been some attempt by the plaintiff to
20 show a ratifying of this agreement by Mr. Charles Brown, and that
21 stems from the conversation over the phone wherein he and
22 Mr. Luebcke spoke, and Mr. Brown is reported to have said that
23 the bill was larger than they had thought, that he had not
24 received sufficient monies, but he would try.

25 Now, the plaintiff has indicated that--both in opening

1 argument and in closing argument, that this had to do with a
2 retainer. There was nothing in the testimony having to do with
3 a retainer. The only testimony in the--or from a witness was
4 that the bill was larger than they had anticipated, they had not
5 received sufficient monies from the plaintiff, now, that's--or
6 from the client.

7 Now, that's a lot different from talking about a
8 retainer, because this could very well now be simply an
9 explanation that he's the conduit through which these monies are
10 to travel, and that there's no testimony that these monies were
11 to be paid out of a retainer fee.

12 And his further comment that he would try to get the
13 money, I think adds weight to that, that he appreciates Alpha-
14 graphics' position and that he would try to get sufficient money
15 from his client to pay the bill, and the Court does not find
16 that in any sense, is that ratification of the contract.

17 So, gentlemen, that brings us then to the defendant's
18 case, with one defendant left still in the case.

19 Mr. Call, how long, or how many witnesses do you
20 anticipate calling?

21 MR. MERCER: By the way, your Honor--

22 THE COURT: Yes.

23 MR. MERCER: --I apologize for that misstatement on
24 retainer versus money received.

25 THE COURT: Well, no. No. And I--I didn't perceive

1 going to overrule the objection.

2 You may continue.

3 MR. CALL: Okay.

4 THE WITNESS: He identified himself as a printer who was
5 doing a printing job on a prospectus for William Cooper Winery.
6 I knew William Cooper Winery to be a client of Charles Brown,
7 who is also an attorney in our firm.

8 He indicated that he was calling me because he could
9 not reach Charles, who--

10 MR. MERCER: Objection on hearsay now, your Honor.
11 This is beyond the foundation and the identification.

12 THE COURT: Well, still overruled. He's explaining
13 why he's calling this individual rather than someone else, so
14 you may continue.

15 THE WITNESS: He--he explained that he was calling me
16 because he was unable to meet with Charles Brown, because
17 Charles was out of--out of town that day, and as I recall, that
18 was correct. Because I, myself, had tried to call Charles
19 earlier that morning and--and was not able to reach him at home.

20 He indicated that he needed to meet with me to go over
21 some matters concerning this prospectus and could he--could he
22 meet with me some time in my office that morning. I indicated
23 that--that he could.

24 Q (By Mr. Call) So, did you meet with him that morning?

25 A Yes. Later--later on after the phone call, shortly

1 after, I guess, oh, a matter of ten or 15 minutes, Mr. Luebcke
2 and two other gentlemen came to the office and we met in the
3 office to--I guess to discuss their concerns.

4 Q What--did they ask you questions about the prospectus,
5 then?

6 A Yeah. They--as Mr. Luebcke had said, the reason they
7 wanted to meet with me was to get some questions answered about
8 the prospectus, and they had specific questions about, oh, items
9 such as should the cover page of the prospectus be repeated on
10 the inside cover; should the--I think there was a promissory
11 note that a--that a--an investor, potential investor might sign,
12 they wanted to know if that should be printed on just one single
13 paper, rather than having something printed on the back of it.
14 There was a subscription agreement they wanted to know, I think,
15 if that should be printed on the same side, or I--excuse me,
16 printed on one side only, or whether it was okay to print it on
17 two sides, and I answered their questions concerning those.

18 And I think that was--I think that was all that was
19 said about--about the actual printing of the prospectus, about the
20 lay-out of the prospectus.

21 Q Was--was anything else said about who would be
22 responsible?

23 A Yes, I--towards the end of the conversation, one of the
24 gentlemen, I don't--I don't recall who, said if they--asked me if
25 they had any further questions, should they contact me, or could

1 they contact me, and I was--well, it was a busy day for me, and
2 I felt that should just go ahead and contact Charles, so I says,
3 well,--I told them just contact Charles because it's his client
4 and he'll be back tomorrow, because you know, I felt that they
5 had just wasted my time, I don't know what they were doing there,
6 'cause, you know--

7 MR. MERCER: Your Honor, I move to strike that latter
8 portion. It's not responsive, and furthermore, move to strike all
9 of this testimony on the basis that we don't even know who the
10 person speaking is.

11 THE COURT: Well, the last phrase will be stricken out
12 because it was not responsive to the question as to what was said
13 about the responsibility; but we have had testimony previously
14 about who was in that conversation, as the Court reviews its
15 note and refreshes its memory, Mr. Luebcke has testified about
16 this conversation and who was with him, so that objection is
17 overruled.

18 You may continue.

19 THE WITNESS: Okay. I--

20 THE COURT: Let's go on to the next question, though.

21 MR. CALL: Thank you.

22 THE WITNESS: Wait. I didn't finish my answer, your
23 Honor.

24 THE COURT: Well, but I've sustained his objection and
25 you are not now being responsive.

1 THE WITNESS: But can I be responsive?

2 THE COURT: Well, only if--let's have him ask the next
3 question.

4 THE WITNESS: Okay. I'm sorry. It's my first--

5 Q (By Mr. Call) Did any--okay. Did anyone ask you who
6 would pay for the printing?

7 A No. I--I recall specifically one of the gentlemen
8 said--told me that Charles had told him--

9 MR. MERCER: Objection, your Honor. May we have a
10 clarification as to who is speaking on this particular, very
11 important matter.

12 THE COURT: Yes.

13 THE WITNESS: I didn't know--I didn't know who it was.
14 I didn't know who these people were. I--they could--I didn't know
15 who they were, they could have been Adam, for all I knew. So, I--
16 it's hard for me to identify who they were.

17 Q (By Mr. Call) It was one of the men present in that
18 meeting?

19 A It was one of the three men present at the meeting
20 who indicated that they had to come and talk to me about this--
21 this prospectus.

22 It was not me. I did not say anything. I did not
23 say--indicate anything about who would be a responsible party.
24 That's what was told to me.

25 Q You--but did anyone there ask--ask you who would pay

1 for the printing?

2 A No.

3 Q Did anyone in the conversation use the words
4 responsible party?

5 A No. I don't think those actual words were used. I
6 don't think--

7 Q Can you--did you ever tell anyone that Charles would
8 be responsible, would be the responsible party--

9 MR. MERCER: Objection on leading, your Honor.

10 THE COURT: Well, it is leading, but I'm going to--
11 where we all, there's not a jury present, and we all understand
12 exactly what the context of this conversation was. He may answer
13 the question.

14 THE WITNESS: Can you--I'm sorry. What was the
15 question again?

16 Q (By Mr. Call) Did you ever tell anyone that Charles
17 would be the responsible party for the printing?

18 A No. I did not.

19 Q And you--you're sure that you wouldn't have told them
20 that? How can you be so sure you wouldn't have told them that?

21 A Well, because I recall one of the gentlemen telling me,
22 one of the gentlemen telling me that Charles had agreed to pay
23 for the printing, and I recall at the time thinking--

24 MR. MERCER: Objection on hearsay, your Honor, and I
25 move to strike that. It's irresponsive and it--

1 THE COURT: Yes. I will strike that because that
2 statement really we should have further foundation as to who
3 made that statement, so that we would know by what authority
4 such a statement would have been made. So, I will sustain the
5 objection.

6 MR. CALL: Okay.

7 Q (By Mr. Call) Would you have--would you have told them
8 that Charles Brown would be responsible?

9 A No.

10 MR. MERCER: Objection on speculation, your Honor. That
11 is not what this witness is here to testify about.

12 THE COURT: He's already testified that he would not
13 have told them that previously, so continue on.

14 Q (By Mr. Call) Would you have told them that Charles
15 Brown would have been the responsible party?

16 A No.

17 Q And why is that?

18 A Well, I had no idea who--who had agreed to pay for the
19 printing or who was to be responsible. I recall at the time that
20 these guys came over and said that they needed some help on a
21 couple of things on the lay-out and they also told me that they
22 had done the vast majority of the work over the weekend.

23 MR. MERCER: Objection, your Honor, on hearsay and
24 again that's irresponsible, your Honor.

25 THE WITNESS: I'm just saying why I recall this so well.

1 THE COURT: Well, but that wasn't the question, so the
2 objection is--

3 Q (By Mr. Call) You--

4 THE COURT: --sustained.

5 MR. CALL: Okay.

6 Q (By Mr. Call) Did--do you have authority to bind
7 Charles?

8 A None that I know of.

9 Q So if you would have said Charles--so if you would have
10 said--so--strike that.

11 Do you recall one of the printers telling you who would
12 be responsible for the printing?

13 A Yes, I do.

14 Q And who did they say would be responsible?

15 A They said Charles had agreed to pay for the printing.

16 MR. MERCER: Objection again on hearsay, the Court
17 has already--

18 THE COURT: I don't know, where are we going on this?
19 I've already dismissed Charles out; right?

20 MR. CALL: Yes.

21 THE COURT: So,--so what--the statement--why is it
22 material anyway?

23 MR. CALL: What I'm trying to show, your Honor, is that
24 Jeff Brown would not--there's a dispute here as to whether Jeff
25 Brown said Charles Brown would be responsible, or whether one--

1 THE WITNESS: I'm sorry.

2 THE COURT: Yeah, so--no, you may continue. You may
3 continue with your questioning as to what amount of work had
4 been completed at that time, what was represented to him that
5 had been completed.

6 Q (By Mr. Call) What discussions were had about the
7 amount of work completed at that time?

8 A Well, one of the individuals at the meeting, and I
9 believe it was Mr. Kermit Johnson, but I don't recall, I don't
10 believe it was Mr. Luebcke in any event, handed me what appeared
11 to be almost a completed prospectus, and--and--

12 MR. MERCER: Objection to the fact that the prospectus
13 was almost completed, your Honor. This witness is--has stated
14 that he wasn't familiar with the case and is certainly not in a
15 position as a printer or as an attorney, to give any testimony
16 to this Court as to whether--what the state of completion was.

17 THE COURT: No, he--you can look at a document and tell
18 if it's near completion or not. With his work as an attorney,
19 he would be familiar with what would be required.

20 Overruled. You may answer.

21 THE WITNESS: They handed me what appeared to be a nearly
22 completed prospectus. They--they had--they said that they had a
23 couple of final questions on it finalizing the prospectus, that
24 was, as I testified earlier, whether one side should be doub--
25 whether the promissory note should be printed on one--only one

1 side of the paper and the subscription agreement as well, whether
2 the cover sheet should be repeated on the inside. They had
3 told me that with the vast majority of work that they had done
4 over the weekend, because they were facing a Tuesday deadline,
5 and we met on Monday.

6 Q (By Mr. Call) Was there a price for the printing
7 discussed?

8 A Not at that--

9 Q At that meeting?

10 A Not at that meeting.

11 Q Did they discuss how many copies were to be made?

12 A No.

13 Q Did they discuss anything regarding terms of payment?

14 A No. No. The only discussion was the one comment that
15 one individual made, where he told me that Charles said he would
16 be responsible, or pay for the printing.

17 Q All right. Okay.

18 MR. MERCER: Objection. The Court has already--I'd
19 move to strike that. The Court has already stricken previous
20 testimony on that point.

21 MR. CALL: Your Honor, since then, we've identified
22 that Mr. Luebcke was there and the Court has overruled that
23 objection, and we're just merely stating what had taken place.

24 THE COURT: I--

25 MR. CALL: As far as who would be responsible.

1 have corporate liability.

2 And with that, your Honor, I will submit it.

3 MR. CALL: Do I get an opportunity to respond?

4 THE COURT: No. I think--

5 MR. MERCER: I would object to that.

6 THE COURT: --that we have one rebuttal and that's--
7 that's it.

8 The--the issues obviously are not very clear cut in
9 this matter, and I suppose that's because the testimony was not
10 very clear cut, and I suppose that's because the case is now,
11 as has been pointed out, well, over a year old and is quite
12 critical as to what takes place in these discussions over a year
13 ago as to where liability actually rests.

14 But I think there are some very evident things or
15 things which are evident because they were not done that brings
16 us to the final conclusion, the final result of this case. There
17 is no question but what someone from the firm of Brown, Smith &
18 Hanna made a phone call to a printing company, and my notes
19 indicate that that was in June or July of 1988, and it was an
20 individual by the name of Renae and they called and wanted a
21 quote on a prospectus.

22 Now, again, the testimony is quite clear that the
23 original firm that was contacted after getting into the matter,
24 that this was over their head, that they could not handle this.
25 That Mr. Luebcke, in the interim, had made a transfer of

1 employment and ended up with the plaintiff in this matter,
2 Alphagraphics, and from the testimony, it is clear that in the
3 first meeting with Charles Brown, it became apparent that though
4 Mr. Luebcke originally was with Progressive Printing, he was
5 now with Alphagraphics Printing and they were in a position to
6 do this--this kind of work. And we have nothing said by either
7 party from the testimony that's been heard, that would give the
8 Court any reason to believe that Smith--Brown, Smith & Hanna did
9 not want Alphagraphics to do the work, and therefore, accepted
10 them as the--as the printer.

11 So, the first contact is made by the law firm. Then
12 we have meetings with Charles Brown, and apparently, it would
13 have been desirable that those meetings extend, but Mr. Brown
14 goes out of town. And so the next meeting we have is with
15 Mr. Jeffrey Brown and that's, again, back in the offices of the
16 law firm, when various things are discussed, some agreed to by
17 both sides, and some, according to the testimony, denied by one
18 or both sides.

19 But nevertheless, the conversation, the interview, the
20 discussion is had in the law firm, in their offices. Now, we had
21 quite a bit of testimony about one segment of that conversation
22 and that was, was there or was there not a specific question as
23 to who will be responsible.

24 The plaintiff said that they asked who would be
25 responsible and the reply from Mr. Jeffrey Brown was that Charlie

1 would be. Mr. Jeffrey Brown denies that and says that the only
2 thing that he recalls concerning that phase of the discussion
3 was someone saying, of these three individuals who were present,
4 one of them saying that Charles Brown would be responsible.

5 And I assume from the testimony of Mr. Jeffrey Brown
6 that he was not in a position to respond to that because one,
7 either that statement wasn't made, or two, if it was made, he
8 was not that familiar with the case, Alphagraphics--or excuse
9 me, the Winery not being his client, and he apparently didn't
10 even know if it was Mr. Charles Brown's personal client or whether
11 it was a client of the firm; but in either event, he did not
12 have enough information to make a response to it.

13 Well, where does this--where does this bring us? It
14 would appear to the Court, from the testimony that we have, and
15 I am the first to admit that in some areas, that's pretty meager,
16 on the one hand, we have a law firm, individuals who are
17 obviously well schooled and well trained in the law, dealing
18 with individuals from a--a printing company.

19 Now, certainly the individuals from the law firm are--
20 are very knowledgeable as to what it takes to make a contract,
21 as to the need to be specific in those details which will
22 eventually, or could eventually surface to cause problems.
23 Nowhere in the testimony by any of the defendants' witness do
24 we have a statement even claimed to have been made that, no, the
25 law firm is not responsible for this, this is the winery's

1 business, we're simply their attorneys, and we're simply helping
2 them negotiate this as part of our--part of our duty to them,
3 responsibility to them; but this statement is not made.

4 The best that we can say for the law firm in this
5 whole procedure is that they're very noncommittal as to who's
6 going to be responsible. They, at no time, deny responsibility
7 and they at no time specifically say the winery is responsible.

8 Now, with that being the case, what would the
9 representatives of the printing company be led to expect? They're
10 dealing only with members of the law firm, they're dealing on
11 the premises of the law firm, the first contact was made to them
12 by a representative of the law firm, and the only time that they
13 apparently ever meet with someone from the winery is this meeting
14 where Guy Davis is present, and some specific questions as to
15 the format or the lay-out of this prospectus is discussed with
16 him because apparently it's his--it's his responsibility to--
17 to design this or to have it printed.

18 The next problem which the law firm runs into is that
19 once the invoice is--

20 (Tape change. Some proceedings not recorded.)

21 THE COURT: --as has been pointed out by Mr. Mercer,
22 at no time does the law firm ever notify the plaintiff that
23 you're billing the wrong people. We didn't agree to pay this
24 bill, but rather, again, the only testimony we have is that
25 Charles Brown will see if he can't get the money from the winery.

1 At no time does he deny responsibility, at no time does he deny
2 the existence of this debt, but simply continues on with this
3 discussion by saying, well, we'll see if we can get some more
4 money, we weren't given a big enough retainer, et cetera.

5 Now, finally, as to the value of this work, the
6 testimony by the plaintiff is that the work was valued at \$4,000.
7 We have some testimony by Mr. Jeffrey Brown that he was told
8 that it would be two to \$3,000, but that is such an isolated
9 statement, it's not--we don't know who makes the statement.
10 Specifically, he thinks it's Mr. Lubeck--or Luebcke, but
11 Mr. Luebcke denies that he ever called out, but doesn't deny
12 that perhaps someone else from the printing company could have
13 called; but we have this one statement that it might be two--
14 or it would be two, maybe as high as three. But the invoice
15 arrives for \$4,000, and we have no testimony at all that there's
16 an objection by the law firm or the winery, that this is an
17 excessive bill, that they want to talk about this; simply, the
18 invoices continue to come, the letters start to come and nobody
19 makes any--any complaint about it.

20 Based upon the evidence which we've heard, the Court
21 finds for the plaintiff as against the law firm, in that if not
22 by direct statement, the law firm entered into this contract,
23 they certainly, by their actions, by the implications, and by
24 their response after the merchandise was delivered, they have
25 accepted this contract. And so I find for the plaintiff as

1 prayed as against the law firm, plus costs, plus interest at the
2 legal rate of ten percent.

3 Gentlemen, if you wish findings of fact and conclusions
4 of law, Mr. Mercer, if you will prepare those, submit them to
5 Mr. Call for his approval, and the Court will be happy to sign
6 them.

7 MR. MERCER: Thank you, your Honor.

8 THE COURT: Uh huh.

9 MR. CALL: Thank you, your Honor.

10 (Whereupon, this hearing was concluded.)
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